

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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EILEEN PEREZ,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

14-cv-9083

OPINION

Plaintiff Eileen Perez brings this action pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g), seeking judicial review of a final decision of the Commissioner of Social Security (the “Commissioner”), which denied her application for disability insurance benefits. Both sides have moved for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). Before the Court is the February 10, 2016 Report and Recommendation of the Hon. Ronald L. Ellis, United States Magistrate Judge, recommending that the Court deny Perez’s motion and grant the Commissioner’s cross-motion (the “Report”). For the following reasons, the Court adopts the Report in full.

Background¹

Perez applied for Social Security Disability benefits, alleging disability as of June 30, 2011, because of rheumatoid arthritis, left and right knee arthritis, and left shoulder arthritis. After the Social Security Administration denied her application, she requested and was granted a hearing before an Administrative Law Judge (“ALJ”). On March 19, 2013, Perez appeared with counsel and testified at a hearing before ALJ Selwyn Walters.

ALJ Walters denied Perez’s claim for disability on July 23, 2013. The Appeals Council denied Perez’s request for review, making the ALJ’s decision the final administrative agency decision on Perez’s application for disability benefits.

On November 14, 2014, Perez commenced this action. On June 4, 2015, Perez filed a motion for judgment on the pleadings, seeking to vacate the ALJ’s decision. On August 31, 2015, the Commissioner filed a cross-motion for judgment on the pleadings.

On February 10, 2016, Judge Ellis issued the Report, recommending that the Court deny Perez’s motion and grant the Commissioner’s cross-motion for judgment on the pleadings. The deadline for the parties to file objections to the Report was February 29, 2016. *See* Report at 20. To this date, no objections have been filed.

¹ The court’s summary of the facts is drawn from the detailed account of the facts provided in the Report, to which neither party objects. The court adopts in full the Report’s recitation of the facts.

Discussion

“A district court may set aside the Commissioner’s determination that a claimant is not disabled only if the factual findings are not supported by ‘substantial evidence’ or if the decision is based on legal error.” *Burgess v. Astrue*, 537 F.3d 117, 127 (2d Cir. 2008) (citation omitted); *see also* 42 U.S.C. § 405(g). “Substantial evidence means more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Burgess*, 537 F.3d at 127 (citation omitted).

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Because neither Perez nor the Commissioner has submitted objections to the Report, review for clear error is appropriate.

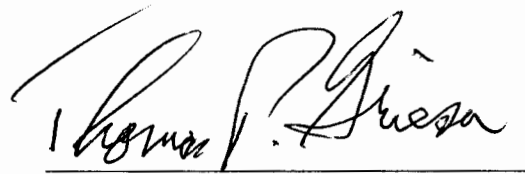
Careful review of Judge Ellis’s Report reveals no facial error in its conclusions. The Report is therefore adopted in its entirety.

Conclusion

For the reasons articulated in the Report, the Court denies Perez's motion and grants the Commissioner's cross-motion. The Clerk of Court is directed to terminate the motions pending at docket numbers 13 and 17, and to close this case.

SO ORDERED.

Dated: New York, New York
March 3, 2016

A handwritten signature in black ink, appearing to read "Thomas P. Griesa", written over a horizontal line.

Thomas P. Griesa
U.S. District Judge